

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 235

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO FORECLOSURES AND DEFICIENCY JUDGMENTS; AMENDING SECTION 45-1503, IDAHO CODE, TO PROVIDE LIMITATIONS ON THE INSTITUTION OF CERTAIN JUDICIAL ACTIONS AGAINST CERTAIN PERSONS, TO REVISE TERMINOLOGY, TO REMOVE PROVISIONS ALLOWING THE BENEFICIARY TO BRING AN ACTION WITHOUT CERTAIN CONSEQUENCES, WAIVERS OR ALTERNATE PLEADING REQUIREMENTS, TO PROVIDE THAT IN A CERTAIN ACTION THE BENEFICIARY MAY SEEK JUDICIAL FORECLOSURE WITHOUT AFFECTING THE PRIORITY OF THE LIEN AND TO PROVIDE THAT IF THE BENEFICIARY OBTAINS A JUDGMENT, THE LIEN SHALL NOT ATTACH TO SUBSTANTIALLY VALUELESS PROPERTY; AMENDING SECTION 45-1512, IDAHO CODE, TO PROVIDE AGAINST WHOM A MONEY JUDGMENT MAY BE SOUGHT, TO PROVIDE FOR APPLICATION OF ANY PROCEEDS RECEIVED FROM THE PROPERTY SALE, TO PROVIDE A CERTAIN CREDIT AGAINST A DEFICIENCY OWING, TO PROVIDE FOR THE APPLICATION OF CERTAIN LIMITATIONS TO THE AMOUNT OF INDEBTEDNESS OF A GUARANTOR, TO PROVIDE THAT ANY ATTEMPT BY CONTRACT OR OTHERWISE TO WAIVE ANY PROVISION OF THE SECTION SHALL BE VOID AS AGAINST PUBLIC POLICY AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 45-1503, Idaho Code, be, and the same is hereby amended to read as follows:

45-1503. TRANSFERS IN TRUST TO SECURE OBLIGATION – FORECLOSURE. (1) Transfers in trust of any estate in real property as defined in section 45-1502(5), Idaho Code, may hereafter be made to secure the performance of an obligation of the grantor or any other person named in the deed to a beneficiary. Where any transfer in trust of any estate in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security, and a deed of trust executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of beneficiary, by foreclosure as provided by law for the foreclosure of mortgages on real property. If any obligation secured by a trust deed is breached, the beneficiary may not institute a judicial action against the grantor, obligor or guarantor of the obligation secured thereby, or his successor in interest to enforce an obligation owed by the grantor or his successor in interest unless:

(a) The trust deed has been foreclosed by advertisement and sale in the manner provided in this chapter and the judicial action is brought pursuant to section 45-1512, Idaho Code; or

(b) The action is one for foreclosure as provided by law for the foreclosure of mortgages on real property; or

(c) The beneficiary's interest in the property covered by the trust deed is substantially valueless as defined in subsection (2) of this section, in which case the beneficiary may bring an action in a single proceeding against the grantor, obligor or guarantor of the obligation secured thereby, or his successor in interest to enforce the obligation owed ~~by grantor or his successor in interest without first~~ in lieu of resorting to the security; or

(d) The action is one excluded from the meaning of "action" under the provisions of section 6-101(3), Idaho Code.

(2) As used in this section, "substantially valueless" means that the beneficiary's interest in the property covered by the trust deed has become valueless through no fault of the beneficiary, or that the beneficiary's interest in such property has little or no practical value to the beneficiary after taking into account factors such as the nature and extent of the estate in real property which was transferred in trust; the existence of senior liens against the property; the cost to the beneficiary of satisfying or making current payments on senior liens; the time and expense of marketing the property covered by the deed of trust; the existence of liabilities in connection with the property for clean up of hazardous substances, pollutants or contaminants; and such other factors as the court may deem relevant in determining the practical value to the beneficiary of the beneficiary's interest in the real property covered by the trust deed.

~~(3) The beneficiary may bring an action to enforce an obligation owed by grantor or his successor in interest alleging that the beneficiary's interest in the property covered by the trust deed is substantially valueless without affecting the priority of the lien of the trust deed and without waiving his right to require the trust deed to be foreclosed by advertisement and sale and the beneficiary may, but shall not be required to, plead an alternative claim for foreclosure of the trust deed as a mortgage in the same action. In an action to enforce an obligation of a grantor, obligor or guarantor, if the court finds that the property is not substantially valueless, the beneficiary may, without affecting the priority of the lien of the trust deed, seek judicial foreclosure of the trust deed, or he may dismiss the action and foreclose the trust deed by advertisement and sale in the manner provided in this chapter. If the court finds that the beneficiary's interest in the property covered by the trust deed is substantially valueless and enters a judgment upon the obligation, when that judgment becomes final the beneficiary shall execute a written request to the trustee to reconvey to the grantor or his successor in interest the estate in real property described in the trust deed. If the beneficiary obtains judgment on an obligation secured by a trust deed pursuant to subsection (1)(c) of this section, the lien of the judgment shall not relate back to the date of the lien of the trust deed and shall not attach to the substantially valueless property.~~

SECTION 2. That Section 45-1512, Idaho Code, be, and the same is hereby amended to read as follows:

45-1512. MONEY JUDGMENT – ACTION SEEKING BALANCE DUE ON OBLIGATION. (1) At any time within three (3) months after any sale under a deed of trust, as

1 hereinbefore provided, a money judgment may be sought against obligors and guarantors for  
 2 the balance due upon the obligation for which such deed of trust was given as security, ~~and~~.

3 (2) In such action the plaintiff shall set forth in his complaint the entire amount of  
 4 indebtedness which was secured by such deed of trust and the amount for which the same was  
 5 sold and the fair market value at the date of sale, together with interest from such date of sale,  
 6 costs of sale and attorney's fees. Any proceeds received from the sale of the property shall  
 7 be applied to reduce the indebtedness of obligors and guarantors. If default insurance on the  
 8 obligation is paid for by the obligor or guarantor, then any proceeds paid or payable to the  
 9 secured creditor from such policy shall be credited against the deficiency owing.

10 (3) Before rendering judgment the court shall find the fair market value of the real  
 11 property sold at the time of sale. The court may not render judgment for more than the amount  
 12 by which the entire amount of indebtedness due at the time of sale exceeds the fair market  
 13 value at that time, with interest from date of sale, but in no event may the judgment exceed  
 14 the difference between the amount for which such property was sold and the entire amount  
 15 of the indebtedness secured by the deed of trust. In applying the limitations of this provision  
 16 to a guarantor, the entire amount of the indebtedness shall be the amount guaranteed in the  
 17 guarantee agreement, if different than the indebtedness secured by the deed of trust.

18 (4) Any attempt by contract or otherwise to waive any provision of this section shall be  
 19 void as against public policy.

20 SECTION 3. An emergency existing therefor, which emergency is hereby declared to  
 21 exist, this act shall be in full force and effect on and after its passage and approval.